

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Wisconsin

1902(f) and 1917
of the Act
(P.L. 100-360
and P.L. 100-485)

Legal authority to
implement P.L. 101-239
changes pending in
state legislature

The agency provides for a period of ineligibility for nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for services under section 1915(c) in the case of an institutionalized individual who, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to Medical Assistance under the State Plan on such date) or, if the individual is not so entitled, the date the individual applies for such assistance while an institutionalized individual, disposed of resources for less than fair market value.

A. The period of ineligibility begins with the month in which such resources were transferred and the number of months in such period is equal to the lesser of:

1. 30 months; or
2. The total uncompensated value of the resources transferred divided by the average cost, to a private patient at the time of application of nursing facility services in the state.

B. An individual is not found ineligible under A. to the extent that -

1. The resources transferred were a home and title to the home was transferred to:

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- a. The individual's spouse;
- b. A child of the individual who is:

- 1) under age 21;
- 2) Blind;
- 3) Permanently and totally disabled;

* Effective for divestments occurring on or after 8/9/89.

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- c. The individual's sibling who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the date the individual became an institutionalized individual; or
- d. The individual's son or daughter other than a child described in par. b who was residing in the individual's home for a period of at least two years immediately before the date the individual became an institutionalized individual and who provided care to his or her parent which enabled the parent to reside at home rather than in such an institution or facility.

The institutionalized individual must provide a notarized statement to the income maintenance agency affirming that he or she was able to remain in the home because of the care provided by the child. The statement must be signed by his or her physician or another person who has personal knowledge of the institutionalized individual's living circumstances. A notarized statement from the individual's child does not satisfy these requirements.

"Home" is defined as a place of abode and lands used or operated in conjunction with it.

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- C. The resources were other than homestead property and the resources were transferred to:

- 1. The community spouse or to another for the sole benefit of the community spouse;
- 2. The individual's child who is
 - a. Blind; or
 - b. Permanently and totally disabled;

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3. The individual's spouse other than a community spouse or to another for the sole benefit of the individual's spouse if such spouse does not transfer such resource to another person other than the spouse for less than fair market value.
- D. An individual who has divested may be found eligible if a satisfactory showing is made to the state that:
1. The individual intended to dispose of the resources at fair market value or other valuable consideration;
 2. The resources were transferred exclusively for a purpose other than to qualify for Medical Assistance. For example, the individual furnishes convincing evidence that shows that at the time of the divestment he or she had already provided for future maintenance needs and medical care;
 3. The ownership of the divested property is returned to the person who originally disposed of it;
 4. Transfer of the resource occurred as of the result of division of property as part of a divorce or separation action, loss of property due to foreclosure or repossession of property due to failure to meet payments; or
 5. Denial of eligibility would work an undue hardship.

"Undue Hardship" is defined to mean that an immediate life-threatening circumstance exists for the institutionalized individual. This is a situation in which, because of denial or termination of MA eligibility and subsequent lack of access to needed medical care, a person is in an immediate life-threatening circumstance.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: WISCONSIN

TRANSFER OF ASSETS

1917(c) The agency provides for the denial of certain Medicaid services by reason of disposal of assets for less than fair market value.

1. Institutionalized individuals may be denied certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

The agency withholds payment to institutionalized individuals for the following services:

Payments based on a level of care in a nursing facility;

Payments based on a nursing facility level of care in a medical institution;

Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals:

X

— The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905(a) of the Social Security Act:

All MA recipients eligible to receive the services listed in the next paragraph.

The agency withholds payment to non-institutionalized individuals for the following services:

Home health services (section 1905(a)(7));

Home and community care for functionally disabled and elderly adults (section 1905(a)(22));

Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905(a)(24).

— The following other long-term care services for which medical assistance is otherwise under the agency plan:

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State: WISCONSIN

TRANSFER OF ASSETS

3. Penalty Date--The beginning date of each penalty period imposed for an uncompensated transfer of assets is:
- X the first day of the month in which the asset was transferred;
- the first day of the month following the month of transfer.
4. Penalty Period - Institutionalized Individuals--
In determining the penalty for an institutionalized individual, the agency uses:
- X the average monthly cost to a private patient of nursing facility services in the agency;
- the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized.
5. Penalty Period - Non-institutionalized Individuals--
The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services;
- imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

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State: _____

TRANSFER OF ASSETS

6. Penalty period for amounts of transfer less than cost of nursing facility care--
- a. Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency:
- ☒ does not impose a penalty;
- ☐ imposes a penalty for less than a full month, based on the proportion of the agency's private nursing facility rate that was transferred.
- b. Where an individual makes a series of transfers, each less than the private nursing facility rate for a month, the agency:
- ☒ does not impose a penalty;
- ☐ imposes a series of penalties, each for less than a full month.
7. Transfers made so that penalty periods would overlap--
The agency:
- ☒ totals the value of all assets transferred to produce a single penalty period;
- ☐ calculates the individual penalty periods and imposes them sequentially.
8. Transfers made so that penalty periods would not overlap--
The agency:
- ☒ assigns each transfer its own penalty period;
- ☐ uses the method outlined below:

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State: WISCONSIN

TRANSFER OF ASSETS

9. Penalty periods - transfer by a spouse that results in a penalty period for the individual--

- (a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.

- STEP #1 - Take the original divested amount used to calculate the institutionalized individual's penalty.
STEP #2 - Subtract the average nursing home private pay rate times the number of months of penalty that have been served through the end of the month prior to the current month.
STEP #3 - Divide the remaining divested amount by the current average nursing home private pay rate and,
STEP #4 - Divide the result in half.

FINAL RESULT - This is the penalty that must be applied to both spouses.

- (b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

10. Treatment of income as an asset--

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

— The agency will impose partial month penalty periods.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

— For transfers of individual income payments, the agency will impose partial month penalty periods.

— For transfers of the right to an income stream, the agency will use the actuarial value of all payments transferred.

— The agency uses an alternate method to calculate penalty periods, as described below:

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SUPPLEMENT 9(a) to ATTACHMENT 2.6-A
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State: WISCONSIN

TRANSFER OF ASSETS

11. Imposition of a penalty would work an undue hardship--
The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an undue hardship. The agency will use the following procedures in making undue hardship determinations:

The State's undue hardship procedure will, at a minimum, include:

- Notice to recipients that an undue hardship exception exists.
- A timely process for determining whether an undue hardship waiver will be granted.
- A process under which an adverse determination can be appealed.

The following criteria will be used to determine whether the agency will not count assets transferred because the penalty would work an undue hardship:

"Undue hardship" means that a serious impairment to the covered individual's health status would occur if the assets transferred were counted.

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